

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
FAIRFIELD SENTRY LIMITED, et al.,	)	Chapter 15 Case
	)	
Debtors in Foreign Proceedings.	)	Case No: 10-13164 (SMB)
	)	
	)	Jointly Administered
	)	
FAIRFIELD SENTRY LIMITED, et al. (IN	)	
LIQUIDATION), acting by and through the	)	
Foreign Representatives thereof,	)	Adv. Pro. No. 10-03496
	)	(SMB)
Plaintiffs,	)	
-against-	)	Administratively
	)	Consolidated
THEODOOR GGC AMSTERDAM, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
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This Supplemental Memorandum of Law is submitted in the	)	
following Adversary Proceedings:	)	
	)	
10-03624 10-03635 10-03636 10-03752	)	
10-03871 11-01244 11-02787	)	
	)	

**DECLARATION OF ELIZABETH VICENS IN SUPPORT OF THE  
FAIRFIELD DEFENDANTS' CONSOLIDATED MOTION TO DISMISS**

I, ELIZABETH VICENS, hereby declare under penalty of perjury as follows:

1. I am a partner with the law firm of Cleary Gottlieb Steen & Hamilton LLP, counsel to CACEIS Bank Luxembourg (“CB Lux Bank”), CACEIS Bank EX IXIS IS

(“CACEIS Bank”),<sup>1</sup> CA Indosuez (Switzerland) S.A. (“CA Indosuez”),<sup>2</sup> Credit Agricole (Miami), Credit Lyonnais Miami,<sup>3</sup> Credit Lyonnais, CPR Online, and Credit Agricole Titres (“Titres”) (collectively, the “Credit Agricole Defendants”) in the above-captioned action. I am a member in good standing of the bars of the State of New York and the United States District Court for the Southern District of New York. I respectfully submit this declaration in connection with the *Consolidated Memorandum of Law in Support of Defendants’ Renewed Motion to Dismiss*, Adv. Pro. No. 10-03496 (Dkt. No. 2903) (“Consolidated Brief”), dated March 16, 2020.

2. I submit this declaration based upon my own personal knowledge and belief, and upon my review of court documents, business records, and other information available to me as counsel.

3. This Declaration incorporates by reference paragraphs 17, 18 and 19, and Exhibits 16, 17 and 18, of the *Declaration of Thomas J. Moloney in Support of the HSBC Defendants’ Supplemental Memorandum of Law in Support of Defendants’ Renewed Motion to Dismiss* (the “Moloney Declaration”) as described more fully below in paragraphs 13, 14 and 15. ***Adv. Pro. Nos. 10-03624, 10-03635, 10-03636 - CACEIS Bank Luxembourg***

4. Attached to this declaration as Exhibit 1a is a true and correct copy of the CACEIS Bank Luxembourg Articles of Association, dated October 6, 2005, identifying that it was registered as an investor services bank with the Luxembourg Business Registry. These records are available at the Luxembourg Business Registry records for Trade and Companies,

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<sup>1</sup> CACEIS Bank has assumed the defense on behalf of CACEIS Bank EX IXIS IS. See Rule 7007.1 Corporate Disclosure Statement, *In re Fairfield Sentry Ltd.*, No. 10-03871 (SMB) (Bankr. S.D.N.Y. Jan. 13, 2017), ECF No. 37.

<sup>2</sup> CA Indosuez previously operated under the name Credit Agricole (Suisse) SA. The parties stipulated to the name change in 2017. See *Fairfield Sentry v. Credit Agricole (Suisse) SA, et al.*, No. 11-01244 (SMB) (Bankr. S.D.N.Y. July 11, 2017), ECF No. 43.

<sup>3</sup> CA Indosuez Wealth (Miami) has appeared on behalf of defendants Credit Agricole (Miami) and Credit Lyonnais Miami. See Adv. Pro. No. 10-3752 (ECF No. 51).

which are available at <https://www.lbr.lu/mjrsc/jsp/IndexActionNotSecured.action?time=1584539974069>. Attached hereto as Exhibit 1b is a true and correct copy of an English translation and certification of Exhibit 1a.

5. Attached to this declaration as Exhibit 2a is a true and correct copy of CACEIS Bank Luxembourg Articles of Association, dated May 7, 2008, identifying that it was registered as an investor services bank with the Luxembourg Business Registry. These records are also available at the Luxembourg Business Registry records for Trade and Companies. *See supra* paragraph 4. Attached hereto as Exhibit 2b is a true and correct copy of an English translation and certification of Exhibit 2a.

6. Attached to this declaration as Exhibit 3 is a true and correct copy of an excerpt of the European Central Bank's List of Monetary Financial Institutions Subject to Minimum Reserves for 2006, dated February 2007, identifying CACEIS Bank Luxembourg on page 117, which is available at [https://www.ecb.europa.eu/stats/financial\\_corporations/list\\_of\\_financial\\_institutions/html/archive.en.html](https://www.ecb.europa.eu/stats/financial_corporations/list_of_financial_institutions/html/archive.en.html).

7. In addition, in further support of the Consolidated Brief, CACEIS Bank Luxembourg intends to join a supplemental memorandum of law submitted on behalf of defendants in Luxembourg, which is expected to be filed on the jointly administered docket and this docket and to include as an exhibit thereto a true and correct copy of the publicly-available Internet Excerpt: CACEIS Bank Luxembourg from the "Banks" Entity Search of the Commission de Surveillance du Secteur Financier (the "CACEIS Bank Luxembourg CSSF Extrait"), which is available at <https://searchentities.apps.cssf.lu/search-entities/entite/details/648?q=&st=advanced&entNames=caceis>.

***Adv. Pro. Nos. 10-03871 - CACEIS Bank***

8. Attached to this declaration as Exhibit 4a is a true and correct copy of the IXIS Investors Services General Meeting of Shareholders, dated September 29, 2006, approving the merger agreement between IXIS Investor Services and CACEIS Bank, which is available at <https://www.infogreffe.com/entreprise-societe/692024722-caceis-bank-750169B024720000.html?typeProduitOnglet=EXTRAIT&afficherretour=true>. Attached hereto as Exhibit 4b is a true and correct copy of an English translation and certification of Exhibit 4a.

9. Attached to this declaration as Exhibit 5a is a true and correct copy of the CACEIS Bank Declaration of Conformity, dated October 2, 2006, approving the merger between IXIS Investor Services and CACEIS Bank, which is available at <https://www.infogreffe.com/entreprise-societe/692024722-caceis-bank-750169B024720000.html?typeProduitOnglet=EXTRAIT&afficherretour=true>. Attached hereto as Exhibit 5b is a true and correct copy of an English translation and certification of Exhibit 5a.

10. Attached to this declaration as Exhibit 6a is a true and correct copy of the CACEIS Bank Amended Memorandum and Articles of Association, dated September 29, 2006, identifying the purpose of the company to be “connected banking and financial services,” among others, which is available at <https://www.infogreffe.com/entreprise-societe/692024722-caceis-bank-750169B024720000.html?typeProduitOnglet=EXTRAIT&afficherretour=true>. Attached hereto as Exhibit 6b is a true and correct copy of an English translation and certification of Exhibit 6a.

***Adv. Pro. Nos. 11-01244 - CA Indosuez (Switzerland) S.A.***

11. Attached to this declaration as Exhibit 7a is a true and correct copy of the Crédit Agricole (Suisse) SA, Articles of Association, dated March 19, 2005, identifying that

“[t]he purpose of the company is the operation of a bank,” which is available at <https://ge.ch/hrcintapp/externalCompanyReport.action?companyOfrcId13=CH-660-2124999-0&ofrcLanguage=4> (select “Excerpt with Cancellations, then select Ref. 16 under “Bylaws date.”). Attached hereto as Exhibit 7b is a true and correct copy of an English translation and certification of Exhibit 7a.

12. Attached to this declaration as Exhibit 8 is a true and correct copy of the Institution Profile information page for Banque Du Credit Agricole (Suisse) S.A., on the FFIEC website, identifying the Banque as a financial institution, which is available at <https://www.ffiec.gov/npw/Institution/Profile/1986231?dt=19920529>.

13. Exhibit 30, Adv. Pro. No. 10-03496 (Dkt. No. 2925-32), to the *Notice Of Filing Of Exhibits To Supplemental Memorandum Of Swiss Financial Institution Defendants In Support Of Defendants’ Renewed Motion To Dismiss*, Adv. Pro. No. 10-03496 (Dkt. No. 2925), is a true and correct copy of the publicly-available Internet Excerpt: CA Indosuez (Switzerland) SA from the “Commercial Registers” of the Swiss canton of Geneva (the “Indosuez Extract”), which is incorporated into this Declaration by reference and is available at <https://ge.ch/hrcintapp/companyReport.action?lang=EN&rcentId=16903407100000066031025&searchLang=&order=F&rad=N&goToAdm=false&showHeader=false&reportNotFound=false>.

14. Exhibit 16 to the Moloney Declaration is a true and correct copy of the Swiss Federal Banking Commission’s (“FBC”) (the predecessor to FINMA) list of authorized banks and securities dealers dated December 26, 2008, indicating Crédit Agricole (Suisse) SA as a “Bank,” which is incorporated into this Declaration by reference. FBC’s list of authorized banks and securities dealers is available at <https://www.finma.ch/FinmaArchiv/ebk/e/institute/pdf/ebh.pdf>.

15. Exhibit 17 to the Moloney Declaration is a true and correct copy of a letter from the Swiss Financial Market Supervisory Authority's ("FINMA") dated February 28, 2020, indicating that CA Indosuez (Switzerland) SA was "authorized to act as a bank" between January 1, 2004 and December 31, 2008, which is incorporated into this Declaration by reference.

16. Exhibit 18 to the Moloney Declaration is a true and correct copy of FINMA's list of authorized banks and securities dealers dated March 3, 2020, indicating CA Indosuez (Switzerland) SA as a "Foreign-controlled banks" on page 7, which is incorporated into this Declaration by reference. FINMA's list of authorized banks and securities dealers is available at <https://www.finma.ch/en/finma-public/authorised-institutions-individuals-and-products/> (click "List of banks and securities firms authorised by FINMA").

***Adv. Pro. 10-03752 - Credit Agricole (Miami)***

17. Attached to this declaration as Exhibit 9 is a true and correct copy of the Final Order of Approval for Calyon, Paris, France, to open "an International Bank Agency in Miami," from the State of Florida Office of Financial Regulation, dated April 3, 2007, and is attached to the Office of Financial Regulations Approval Letter with the subject "In Re: Application by Calyon for Authority to Open an International Bank Agency to be Located in Miami, Miami-Dade County, Florida, (Administrative File No. No. 0394-B-2/07)," available at <https://www.flofr.com/sitePages/verifylicense.htm>. (Select: "Go Verify," then select "Search for Final Administrative Action," then select "Document type – Final Orders," then search "Statute, Chapter 663" along with the date "4/3/2007").

18. Attached to this declaration as Exhibit 10 is a true and correct copy of the Fictitious Name Detail for CA Indosuez Wealth (Miami), Registration, No. G16000004920, filed with the State of Florida Department of State, dated January 12, 2016, which is available at

<http://dos.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G16000004920&rdocnum=G16000004920>.

19. Attached to this declaration as Exhibit 11 is a true and correct copy of the FFIEC profile for Calyon, noting that its primary activity is “Commercial Banking,” which is available at <https://www.ffiec.gov/npw/Institution/Profile/1242357?dt=20060908>.

20. Attached to this declaration as Exhibit 12 is a true and correct copy of the FFIEC profile for Credit Agricole Corporate And Investment Bank, noting that its primary activity is “Commercial Banking,” which is available at <https://www.ffiec.gov/npw/Institution/Profile/1242357?dt=20160627>.

***Adv. Pro. 10-03752 - Credit Lyonnais Miami***

21. Attached to this declaration as Exhibit 13 is a true and correct copy of the Florida Office of Financial Regulation letter to Calyon d/b/a Credit Agricole, dated August 31, 2007, enclosing the “Certification of Authority to Transact Business as an international bank agency, issued to Credit Lyonnais, S.A. [on] February 16, 1982,” which is maintained by and available from the Florida Office of Financial Regulation.

***Adv. Pro. 10-03752 - Credit Lyonnais S.A.***

22. Attached to this declaration as Exhibit 14 is a true and correct copy of an excerpt of the European Central Bank’s List of Monetary Financial Institutions Subject to Minimum Reserves for 2006, dated February 2007, identifying Credit Lyonnais S.A. on page 63, which is available at [https://www.ecb.europa.eu/stats/financial\\_corporations/list\\_of\\_financial\\_institutions/html/archive.en.html](https://www.ecb.europa.eu/stats/financial_corporations/list_of_financial_institutions/html/archive.en.html).

23. Attached to this declaration as Exhibit 15 is a true and correct copy of the Institution Profile information page for Credit Lyonnais S.A., on the FFIEC

website, identifying it as primarily engaged in “commercial banking,” which is available at  
<https://www.ffiec.gov/npw/Institution/Profile/1242366?dt=20110503>.

Respectfully submitted,

Dated: March 20, 2020  
New York, New York

CLEARY GOTTlieb STEEN & HAMILTON LLP

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